IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

MFA.No. 119 of 2002(C)

OPMV.12/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, NORTH PARAVUR
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APPELLANT:

THE NEW INDIA ASSURANCE COMPANY LTD.,
ERNAKULAM BRANCH OFFICE, CHANDRIKA BUILDINGS,
M.G.ROAD, ERNAKULAM, REPRESENTED BY ITS
ASSISTANT ADMINISTRATIVE OFFICER, REGIONAL OFFICE,
KANDAMKULATHY TOWER, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.LAL GEORGE

RESPONDENTS/PETITIONER AND RESPONDENT 1 AND 2 IN O.P.(MV)12/98:
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1. P.M.MOHAMMED ABDUL RAVOOF,
S/O.LATE P.K.MOIDU, AGED 45 YEARS,
PUNNILATH HOUSE, EDAVANAKKAD, ERNAKULAM.

2. K.K.RAJESH, S/O.KARTHIKEYAN,
KALLISSERRY HOUSE, CHERAI.

3. BABU, S/O.GOPALAN, THACHAPPILLY HOUSE,
ELTHURUTHU, AYYANTHOLE VILLAGE, TRICHUR.

BY ADV. SRI.P.M.MOHAMMED SHIRAZ FOR R1
SRI.G.RAJAGOPAL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2007 ALONG WITH MFA.NO.316 OF 2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.569/2002 IN M.F.A.NO.119/2002

DISMISSED.

27.11.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA, JUDGE

/TRUE COPY/

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NOS.119 & 316 OF 2002 ()

Dated this the 27th day of November, 2007

J U D G M E N T

KOSHY,J.

A Homoeo Doctor by profession who was employed as a Chief Medical Officer in the Homoeo Department while coming home at 5.45 p.m. on 5.8.1997 on a scooter bearing registration No.KL-7L/3764 met with an accident by hitting of a car bearing registration No.KDE 3232 driven by the 2nd respondent and thereby he suffered serious injuries. He claimed a compensation of Rs.20 lakhs. Tribunal awarded an amount of Rs.10,75,000/- with interest and directed the Insurance company to deposit the above as offending vehicle was insured by the 3rd respondent Insurance company and it was also found that the accident occurred due to the negligence of the driver of the car. Insurance company filed M.F.A.No.119/2002 contending that the amount awarded is on the high side. Insurance company had obtained permission

under Section 170 to contest the case on merits. Claimant filed M.F.A.No.316/2002 contending that the quantum of compensation awarded is inadequate. In the above circumstances, we are concerned with the quantum of compensation assessed by the tribunal.

2. With regard to loss of earning during the period of treatment, amount awarded was Rs.1,46,669/-. He was under treatment for 20 months and was on leave and tribunal has calculated actual loss of wages on the basis of evidence and we see no ground to interfere in the same. With regard to transportation to hospital at Thrissur and Palakkad even though bills amounting to Rs.30,100/- was produced, tribunal has granted only Rs.12,500/-. We are of the opinion that amount was reasonable. With regard to the medical expenses, bills for Rs.2,41,854/- was produced. But tribunal has granted Rs.2,45,000/- with regard to the injuries as certain incidental expenses are not covered by bills. We see no ground to interfere in the same. Tribunal considered the medical certificate which is as follows:

> "Ext.A1 is the copy of the wound certificate issued from the Modern Hospital, Kodungallur. The petitioner was admitted in that hospital with compound communited fracture of the right femur, compound communited fracture of the right tibia and fibula, extensive laceration extending below the right knee to the ankle exposing the whole muscle and the fractured tibia and fibula. He had several other injuries also, all profusely bleeding. He was referred to a major hospital. Ext.A2 is the copy of the wound certificate issued from the Thrissur Heart Hospital. That reveals the IP treatment of the petitioner in that hospital from 5.8.1997 till 13.9.1997 (i.e. For 39 days). Ext.A2 series that the petitioner had severe crush injury on the right leg with shattering of the upper $^{1}/_{3}^{rd}$ tibia and fibula. There was communited displaced fracture of the right femur. Ext.A3 series are the discharge summary issued from the Heart Hospital. It reveals IP treatment of the petitioner from 5.3.1997 till 13.9.1997, 29.10.1997 till 10.11.1997 (12 days), 11.12.1997 till 27.12.1997 (17 days) and 24.3.1998 till 25.3.1998 (2 days). The admission on 11.12.1997 was for removal of the external fixation. It is stated that the patient was ambulated using Ischial weight bearing caliper and crutches. Ext.A4 series are the treatment certificates issued from the R.V.Clinic, Palakkad."

He was an impatient for 108 days. It is also come out in evidence that several operations were conducted. Ilizarov assembly was fitted on the right leg. Tribunal also noticed that

he came wearing caliper on the right leg. Leg was odematous and larger in size than the left leg. His right foot was dropping and could not bend. He is not able to walk properly. There was shortening of leg by one inch and disability certificate shows that his whole bodied disability is 22.54%. Tribunal was of the view that he was on 20 months leave and loss of wages for the whole period was given. Thereafter he was in employment and his actual earning during the period were not reduced even though appellant had a case that his promotional prospects were lost. Thereafter tribunal has taken that after retirement at the age of 55, he can practice and taking Rs.5,000/- as the monthly income, using 13 is the multiplier, Rs.1,75,812/- was granted. It is true that he lost employment but disability has its own effect on employment and has to suffer the same through out his life. His private practice after retirement was also affected. Considering the nature of injuries and his proforma, we are of the opinion that no further compensation need be granted for permanent disability and loss of earning power though it cannot be stated that compensation is on the high side. But compensation granted for pain and sufferings

and amenities was Rs.1,00,000/-. Even though for 20 months he was under treatment, we are of the view that Rs.1,25,000/- granted for pain and sufferings is on the high side and we reduce the sum to Rs.75,000/-. It is true that compensation for loss of enjoyment and amenities Rs.1,00,000/- was awarded but no amount was awarded for disfigurement even though it is noticed that there is disfigurement and we also noticed that no amount was granted for future medical expenses. We reduce the compensation for loss of enjoyment and amenities etc. to Rs.50,000/- but award Rs.25,000/- for future medical expenses and disfigurement. We are of the view that with regard to the other expenses claimed, tribunal has taken the actual bills and granted actual amount. Hence no interference is required. It is true that in view of the accident, he was unable to drive for going to the hospital or office. He needed to engage a driver throughout his life. Though his claim for purchasing a car was rejected, tribunal has taken it and engaging a driver at Rs.1,000/- per month and considering the interest payable, sufficient amount was awarded for transportation expenses. No interference is required in the same. Therefore, we reduce

from Rs.10,75,000/- to Rs.10,00,000/- as total amount of compensation with proportionate costs and interest at the rate awarded by the tribunal. The award is modified accordingly. The 3rd respondent Insurance company is directed to deposit the above amount after deducting the amount already deposited and on deposit of the amount, claimant is entitled to withdraw the same. With the above observations these appeals are partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.119 & 316 OF 2002 ()

J U D G M E N T

27th November, 2007